

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SUMMER CARPENTER,
TERESA MAY, AUTUMN MILLER, CHASE
MILLER, and CHARLES MILLER IV, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BETTY MILLER,

Respondent-Appellant,

and

CHARLES MILLER III.

Respondent.

UNPUBLISHED

May 12, 2009

No. 286905

Mason Circuit Court

Family Division

LC No. 06-000040-NA

Before: Sawyer, P.J., and Zahra and Shapiro, JJ.

PER CURIAM.

Respondent Betty Miller appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (c)(i), (g), (j), and (k)(iii).¹ We affirm.

I. Basic Facts and Proceedings

The children were taken into care on June 19, 2006, after one of the infant twin boys, was treated on June 16, 2006, for subdural hemorrhages, vitreal hemorrhages, and multiple fractures. Respondent father was home alone with the children, although respondent had returned home from work for a 20-minute lunch. An evaluation of the child revealed numerous injuries from

¹ The court also found that there was clear and convincing evidence to support termination under § 19b(3)(k)(v), but found that this ground applied only to the father, not respondent Betty Miller.

various ages, including subdural hematomas in several parts of his brain, front and back, extensive retinal hemorrhages in both eyes, and healing fractures on his ribs, leg, and arm. In Dr. N. Debra Simms's opinion, some of the brain injuries were less than seven days old, some had occurred within the past three to seven days, and some were more than two weeks old. The subdural hematomas were consistent with injuries that could occur in a car accident, a fall from a balcony or tree, or violent shaking. She opined that the eye hemorrhages were less than 72 hours old. The rib fractures were about four weeks old, and the knee and elbow fractures were two to four weeks old. Dr. Simms reviewed the birth records and found no evidence of a traumatic birth, and she ruled out possible physical causes, such as rickets, inflammation, demineralization, fragile bones (osteogenesis imperfecta), or undeveloped bones (osteopenia). The only injuries old enough to possibly be from the birth were the rib injuries, but that was "quite a stretch."

Dr. Simms explained that when the infant was admitted, the parents described "a sudden onset of deterioration of the child's condition that was not explained by any preceding event." The father reported that the baby started choking during feeding, that he hit him on the back and lifted his arms over his head, and that the infant became limp. Respondent suggested that the infant might have been injured during birth, or hit with a sippy-cup by his 20-month-old sister, or handled improperly by his three-year-old sister, who liked to pick him up. Dr. Simms explained that neither parent provided a reasonable explanation for the injuries.

Later, on July 8, 2006, Dr. Simms also evaluated the other twin infant brother. She found bleeding on his brain from injuries that were more than seven days old, bilateral eye hemorrhages, and a well-healed torn frenulum on the underside of his tongue. He had "an enlarging head with frontal bossing," which Dr. Simms believed was caused by his head injury.

Subsequent interviews of the three girls and observations from the foster mother pointed to signs of previous physical and sexual abuse. For instance, one of the girls, a three-year old, told the nurse that respondent father touched her genitalia with his "bog," but could not explain more. This child would dance "very inappropriately," and rub "her private area in the bathtub and occasionally would put her fingers inside of herself." Once, while specifically indicating her crotch area, she stated, "Chuck bites there." She played with dolls by rubbing their crotch area and once took the panties off a Cabbage Patch doll and licked its crotch. She showed sexualized behavior and had mimicked coital positions with another child. Another of the girls, who was five, alleged that respondent father once made her touch his genital area. She indicated that respondent father, "banged the baby's heads on the floor" and that was why they were in foster care. She referred to her sisters as "my kids," and indicated that the father "hit them on their bellies and it's not nice." Even the two-year-old showed similar behaviors but "not nearly as much as [the three-year old]." When home visits started, she began taking off her messy diaper during naptime and rubbing it on the wall.

Services were provided to respondent and testimony throughout the proceedings tended to indicate that respondent showed some improvement in her ability to parent. However, the trial court found that respondent failed to make sufficient process in the two years of being provided services. The trial court specifically noted that respondent refuses to believe that respondent father caused the injuries, and simply maintained that she has no idea how the injuries incurred. The trial court also noted that respondent knew respondent father easily lost his temper. The trial court also mentioned that the children had behavioral problems that exacerbate after visits from respondent. Further, although the trial court did not conclude that either of the parents acted out

sexually toward the children, the trial court concluded that, at a minimum, the children had seen things they should not have seen.

II. Termination of Parental Rights.

Respondent argues that the statutory grounds for termination were not established by clear and convincing evidence. We disagree.

A. Standard of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proven by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To be clearly erroneous, a decision must strike the reviewing court "as more than just maybe or probably wrong." *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

B. Analysis

The trial court did not clearly err in finding that §§ 19b(3)(c)(i), (g), and (j) were each established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). We cannot dispute the trial court's finding that the younger twin boys each had severe injuries of differing ages that were likely caused by non-accidental trauma. Further, we agree that no reasonable alternative explanation was ever offered for the injuries. Respondent continued to remain dependent on the father, despite ongoing marital discord and evidence that the father presented a risk of harm to the children, and her own acknowledgment that he was capable of harming the children. Several of the children had significant behavioral issues and all of the children were developmentally delayed while in respondent's care. Although respondent participated in services for almost two years, she failed to benefit from the services. Because termination was justified under §§ 19b(3)(c)(i), (g), and (j), any error in relying on §§ 19b(3)(b)(i) and (k)(iii) with respect to respondent was harmless.² *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

III. Best Interests of the Children

A. Standard of Review

"If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights . . . unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5). We review for clear

² There was no evidence that respondent, as opposed to her husband, physically abused the children. Thus, the trial court should not have relied on §§ 19b(3)(b)(i) and (k)(iii) for termination of respondent's rights.

error a trial court's decision regarding whether termination is contrary to the child's best interests. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A decision is clearly erroneous if, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, *supra* at 209-210.

B. Analysis

The evidence did not clearly show that termination of respondent's parental rights was not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, *supra* at 354. The children had been in foster care for almost two years. The older children had serious behavioral issues that abated when visits were stopped. All of the children had high needs, and required permanence and stability that respondent could not provide. Thus, the trial court did not err in terminating respondent's parental rights to the children.

Affirmed.

/s/ David H. Sawyer
/s/ Brian K. Zahra
/s/ Douglas B. Shapiro